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DEC 13 2006

OFFICE OF PETITIONS

In re Application of :
Jia, et al. :
Application No.: 10/681,209 : ON PETITION
Filed: October 9, 2003 :
Attorney Docket No: 62278-1404 :

This is in response to the petition under 37 CFR 1.137(b) filed November 21, 2006.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the non-final Office action mailed November 16, 2005. The notice set a shortened statutory period for reply of three-months from its mailing date. Extensions of time were available pursuant to 37 CFR 1.136(a). A response was not received within the allowable period and the application became abandoned on February 17, 2006. A Notice of Abandonment was mailed on August 30, 2006.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of item (3) above.

As to item (3) above, the statement of unintentional delay is deficient because the petition is not signed by both named inventors, the assignee, or the attorney of record. Further to this point, 37 CFR 1.33(b) provides that:

Amendments and other papers. Amendments and other papers, except for written assertions pursuant to § 1.27(c)(2)(ii) of this part, filed in the application must be signed by:

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34;
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter

The instant petition is only signed by inventor Kirk. In order for the statement of unintentional delay to be considered acceptable, a renewed petition must be filed that is signed by either both inventors Kirk and Jia, the assignee empowered by 37 CFR 3.73(b), or the attorney of record.

It is noted that the address as cite don the petition differs from the address of record. Although a courtesy copy of the decision is being mailed to the address as cited on the petition, all future correspondence will be mailed solely to the address of record until appropriate written instructions to the contrary are received.

Further correspondence with respect to this matter should be addressed as follows:

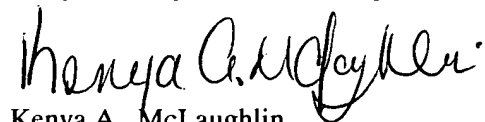
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By facsimile:

(571) 273-8300
Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3222.



Kenya A. McLaughlin
Petitions Attorney
Office of Petitions

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cc:

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